IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

Crl.MC.No. 1948 of 2007()

CP.63/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

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PETITIONER: 43RD ACCUSED;

ILLATHARAKATH ASHRAF, S/O.HUSSAIN,
ILLATHARAKATH HOUSE, AZHIPPUZHA, PATTANNOOR,
KANNUR DISTRICT.

BY ADV. SRI.C.K.SREEJITH

RESPONDENTS: RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. S.H.O.IRIKKUR POLICE STATION,
KANNUR DISTRICT.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 1948 of 2007

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Dated this the 9th day of July, 2007

O R D E R

The petitioner is one of the accused in Crime No. 134 of 2001 of Irikkur Police Station registered, inter alia, under Section 307 r/w. 149 I.P.C. The petitioner was absconding and was not committed to stand trial. The co-accused, who were available, were committed for trial and Sessions Case No.86 of 2005 was registered against those accused before the learned Sessions Judge. The Public Prosecutor filed an application under Section 321 Cr.P.C. for withdrawal of the case against the co-accused. Accordingly, the Prosecutor sought permission for withdrawal from prosecution and after securing the requisite permission from the learned Sessions Judge the case against the co-accused was brought to termination accepting the prayer for withdrawal. The petitioner was shown as an absconding accused. The case against him could not be committed. It is now pending before the learned J.F.C.M. II, Kannur as C.P.No.63 of 2006.

2. The learned counsel for the petitioner submits that the prosecution had chosen to withdraw the case as such and the case against the petitioner is continuing for the sole reason that he was not

present when the application was taken up for consideration. Any further continuation of the prosecution against the petitioner is unjustified. Such proceedings may be brought to termination by invoking the powers under Section 482 Cr.P.C., prays the learned counsel.

3. The learned Prosecutor, after taking specific instructions, submits that the Public Prosecutor and the State have no objection in quashing the proceedings in so far as the petitioner is concerned. The decision was to withdraw the case against all the accused and the case against the petitioner also deserves to be withdrawn. The proceedings against him need not be continued now, submits the Prosecutor.

4. I am, in these circumstances, satisfied that the request of the petitioner can be accepted invoking the powers under Section 482 Cr.P.C. The proceedings against the petitioner in C.P. 63 of 2006 pending before the J.F.C.M. -II, Kannur can be quashed.

5. This Crl.M.C. is accordingly allowed. C.P.No. 63 of 2006 in so far as it relates to the petitioner is hereby quashed.

(R. BASANT)
Judge

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